

REXBURG, WEDNESDAY, JUNE 14, 2023, AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

YELLOWSTONE LOG HOMES, LLC,)	
an Idaho limited liability company,)	Docket No. 49562
)	
Plaintiff-Appellant-)	
Cross Respondent,)	
)	
v.)	
)	
CITY OF RIGBY, a municipal)	
corporation in the State of Idaho,)	
)	
Defendant-Respondent-)	
Cross Appellant.)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Stevan H. Thompson, District Judge.

Nelson Hall Parry Tucker, PLLC, Idaho Falls, for Appellant, Yellowstone Log Homes, LLC.

Hall Angell & Associates, LLP, Idaho Falls, for Respondent, City of Rigby.

This case concerns allegedly negligent action arising from the excavation of an unmarked sewer lateral. Yellowstone Log Homes, LLC, (“Yellowstone”) owns a rental home in Rigby, Idaho, (“the City”), that suffered extensive damage after BorTek Utilities and Construction, LLC, dug through a service lateral for the sewer line servicing the rental home. Prior to the project, the City had marked certain nearby utilities, but not the service lateral leading to Yellowstone’s property. After the incident, Yellowstone contacted the City, asking that it take responsibility for the damages sustained to its property. The City refused, and Yellowstone filed suit against the City, alleging negligence and negligence *per se* for the City’s failure to mark the service lateral. Both parties filed cross-motions for summary judgment.

The district court concluded Yellowstone did not have standing under Idaho Code section 55-2205(2)(a), which creates a cause of action for excavators and underground facility owners, but not end users. The district court explained that even if Yellowstone had standing to pursue its claims, it had not provided “evidence that the City breached the duty to 1) locate and mark its locatable service laterals with reasonable accuracy or 2) to locate and mark identified but unlocatable service laterals with the best information available to the owner of the underground facilities.” Accordingly, the district court granted the City’s motion for summary judgment. However, the district court denied the City’s request for attorney fees. Yellowstone appeals from the district court’s grant of summary judgment to the City, and the City cross-appeals from the district court’s denial of attorney fees.